

**DRAFT ONLY – FOR INFORMATION PURPOSES ONLY  
CHANGES MAY BE MADE**

**AGREEMENT**

This Agreement is made between the City of San Bruno ("City"), a municipal corporation, and \_\_\_\_\_ ("Artist") effective the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Whereas, the City proposed to commission an aesthetically pleasing outdoor sculpture known as the Recognition Sculpture Project (hereinafter the "Work") that is intended to be a single or multi 3-dimensional piece which has as its purpose honoring certain persons in a manner consistent with City policy and which art piece is more particularly described in the call to artists to submit their qualifications and proposals, attached hereto as Attachment B;

Whereas, on \_\_\_\_\_, the San Bruno City Council approved the recommendation of the City's Culture and Arts Commission and Parks and Recreation Commission to engage Artist to design, fabricate, and mount the Work based on his/her qualifications and the mock design presented to those Commissions and the City Council.

The parties agree as follows:

**A. Description of the Work.**

1. The Work shall be made as described below:
  - a. The Work shall be faithful and true reproduction of the piece submitted to the Commissions and City Council, a copy of which is attached hereto as Attachment B
  - b. The scale shall be \_\_\_\_\_.
  - c. The Work must include a means by which City staff may easily add names to it over time without the assistance of the Artist.
  - d. The Work shall provide for the option of adding multiple recognition categories over time and which shall provide for distinct recognition categories designate by distinguishing elements such as alterations in fonts, sizes, shapes, and colors.
  - e. The recognition portions of the Work must be visible either above ground or on the surface of the Work, but not \_\_\_\_\_.
  - f. The Work shall be in a medium that is durable considering that the Work is intended to be placed outdoors.
  - g. Artist shall install the Work at a location designated by the City and shall provide specific instructions and specifications to City so that \_\_\_\_\_.

**2. Location**

The Work is intended to be installed at San Bruno City Park, 251 City Park Way, at the juncture of the park perimeter path between the Veteran's Memorial Recreation Building and the Rotary Pavilion. Upon initial installation, the Work shall be considered property of San Bruno. However, the City retains sole discretion as to how, when, and where the Work will be displayed and/or used and at its sole discretion may choose not to display the Work at any time. *The Artist specifically acknowledges that Artist has no property interest, no right or control over the display or placement of the Work.*

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**3. Materials**

Artist will supply his or her own fabrication materials and, to the extent possible, possible use anti-graffiti materials to allow Artist or City staff to clean or repair damage caused by spray paint, marker, and other types of graffiti damage and vandalism.

**4. Maintenance**

Artist guarantees and warrants the finished Work shall remain in good condition for the period of twenty (20) years. Prior to installation, Artist will provide detailed instructions to City Staff for independently adding recognition name elements without assistance from the Artist. Artist shall not be responsible for damage to the Work not caused by artist. If the City determines that repairs are necessary, the City within its sole discretion may engage any person it chooses to effect said repairs.

If City chooses to engage Artist for touch-ups or repairs after the Work is completed and delivered, the parties agree that the Artist shall be paid \$\_\_\_\_ per hour plus materials and equipment, as approved in advance by the City in writing, and this rate shall remain in effect for two years from the date of deliver of the Work.

**B. Payment.**

City shall pay Artist an amount not to exceed \$\_\_\_\_\_ for services rendered pursuant to this Agreement. Said amount includes design, fabrication, materials, travel, installation, insurance and documentation of the artwork.

The City shall pay Artist 1/3 upon award of contract; 1/3 when the Work is fifty percent complete as verified by Artist in writing and verified by City staff; and a final 1/3 payment shall be made after completion and installation of the Work.

Artist is responsible for said installation, assumes all risk associated with storage, transit, and installation, and shall not be paid if the Work is otherwise damaged or destroyed in storage, transit or during installation.

**C. Timeline.**

Artist agrees to commence work following execution of this Agreement and shall complete the Work no later than 6 months after execution of agreement. Artist and City understand that installation is intended to occur no later than \_\_\_\_\_ but may be reasonably and temporarily delayed by inclement weather, acts of nature, and deadlines associated with conditions on the installation site.

**D. Hold harmless.**

Artist shall hold harmless the City their officers, officials, employees, and agents from and against any injury, loss, liability, expense claim, suits, and damages arising from artist's work including but not limited to copyright violations, personal injury, and property damage, except for the sole or willful negligence of City.

**E. Transfer of Copyright and Waiver of Rights Under VARA.**

Artist has been selected by the City of San Bruno to design and create a work of fine art, as that term is defined by the California Art Preservation Act (“CAPA”; Cal. Civil Code §987). Artist represents that the concept and design of “the Work” is his or her sole creation and original work, and does not infringe any copyright or any similar law protecting authorship. In consideration of the City’s selection of the Artist to design and create this work of fine art for City, Artist agrees to transfer and hereby does transfer irrevocably to the City for fair consideration, all right, title, and interest, including copyright in the Work itself and in the design, sketches, drawings, model, maquettes, slides, photographs, and all other related materials used in the design and creation of this Work.

Artist further agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Act of 1990 (17 U.S.C. §106A and 113(d), the California Art Preservation Act, Cal. Civil Code §987) or any other local, state, foreign, or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights (“Moral Rights Laws”), with respect to the work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration, and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns.

Notwithstanding the foregoing, the Artist may identify himself/herself as the author of the work for self-promotional purposes.

Artist acknowledges that all such decisions concerning the Work shall be made in the sole discretion of the City, its officers, employees, agents, contractors, licensees, successors or assigns. Artist further acknowledges that they retain no rights in and to the Work itself nor to any design, sketches, drawings, maquettes, models, slides, photographs City website postings or other related materials with regard to attribution and integrity of the Work. In addition to the extent such rights may not be waived, Artist covenants not to assert such rights against the City, its officers, employees, agents, contractors, licensees, successors or assigns.

The City has no obligation to pursue claims against third parties for modifications or damage to the Work done without the City’s authorization. However, the City may pursue claims against third parties for modifications or damage or to restore the Work if the Work has been modified without the City’s authorization. In the event the City pursues such a claim, it will make a good faith attempt to notify the Artist, and the Artist shall cooperate with the City’s efforts to prosecute such claims.

If City modifies the art Work without Artist’s consent in a manner that is prejudicial to Artist’s reputation, Artist retains the right to disclaim authorship of the artwork in accordance with 17 U.S.C. 106A(a)(2).

Artist understands the effect of this waiver and hereby acknowledges that Artists is surrendering the rights described herein with respect to the work.

**F. Miscellaneous Provisions.**

1. Cancellation. If City withdraws, cancels or terminates this Agreement at any time after signing this Agreement and before completion of the subject work, City shall notify Artist in writing and shall pay Artist for work performed to the date City notifies Artist in writing of such withdrawal, cancellation, or termination. Notice is deemed complete when mailed. Artist will be paid based as follows: on an hourly rate of \$\_\_\_\_\_ per hour plus materials necessary to the preparation for production of the Work, or alternatively, the payment that would otherwise be due based on the amount of work that is complete in accordance with the payment schedule in Section B, whichever is less.
2. If Artist withdraws cancels or terminates this Agreement at any time after signing this agreement and before completion of the Work, Artist shall notify City in writing and shall be responsible to return any payments received from City from the date of notice within thirty days of notice of cancellation or termination. Notice is deemed complete when mailed.
3. Acts of nature. Artist shall be relieved of his or her obligation under this Agreement in the event that the execution or deliver or the subject artwork is interrupted or made impossible as a result of an act of nature or other event beyond the reasonable control of the parties.
4. Independent contractor. It is agreed and understood that Artist is not an agent or employee of the City and is an independent contractor.
5. Notices.
  - a. All termination and cancellation notices under this section shall be in writing, mailed US Mail and also Registered Mail/Return Receipt and made to City at the following address:  
City Manager  
567 El Camino Real  
San Bruno, CA 94066
  - b. All termination and cancellation notices under this section shall be in writing, mailed US Mail and also Registered Mail/Return Receipt and made to the Artist at the following address:  
[insert]

**G. Arbitration**

Any disputes arising of this Agreement shall be submitted for final and binding arbitration in accordance with the rules of Arts Arbitration and Mediation Services, a program of California Lawyers for the Arts. The arbitrator is authorized to award the prevailing party such sums as may be proper including reasonable attorney's fees in addition to costs and charges of the arbitrator. The arbitrator's award shall be final, and any court having jurisdiction thereof may enter judgment upon it.

**H. Integrated Agreement**

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This agreement contains all the covenants and agreements between the parties hereto with respect to the subject Work. Any modification of these terms shall be effected only in writing signed by each of the parties.

**I. Applicable law.**

This agreement shall be construed in accordance with the laws of the State of California.

Executed as of the \_\_\_ day of \_\_\_ 2009:

**City of San Bruno**

By: \_\_\_\_\_  
Connie Jackson, City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

**Artist:**

\_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Carol Bonner, City Clerk